

BILL KASER

IBLA 81-389

Decided August 17, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. OR MC 9700.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Bill Kaser, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Bill Kaser has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated December 30, 1980, declaring the Bill Pete placer mining claim, OR MC 9700, abandoned and void for failure to file timely evidence of annual assessment work or a notice of intention to hold the claim on or before October 22, 1979, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellant's mining claim was located on July 30, 1973, and filed for recordation with BLM on November 20, 1978. On October 26, 1979, BLM received "Proof of Labor" with respect to assessment work performed during the 1978-1979 assessment year.

In his statement of reasons for appeal, appellant contends that he has done the assessment work for "nine years," spending considerable time and effort, and that he believed that evidence of annual assessment work was not due until December 30.

[1] The applicable regulation, 43 CFR 3833.2-1(a), provides that:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis added.]

See 43 U.S.C. § 1744(a) (1976).

Pursuant to this regulation, appellant was required to file "on or before October 22, 1979," as this date was "sooner" than December 30, 1979, i.e., "December 30 of [the] calendar year following the calendar year of recording." 43 CFR 3833.2-1(a). The applicable regulation, 43 CFR 3833.4, provides the penalty for failure to satisfy the filing requirement of 43 CFR 3833.2-1(a): "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void." See 43 U.S.C. § 1744(c) (1976).

Appellant's evidence of annual assessment work was filed after the final date prescribed for filing. Accordingly, BLM properly declared the claim abandoned and void. Mart I. Gilmore, 55 IBLA 128 (1981); Robert Keough, 54 IBLA 337 (1981).

Despite appellant's asserted good faith efforts to comply, in enacting the filing requirements of FLPMA, supra, Congress did not invest the Secretary of the Interior with authority either to waive compliance with the statute or to afford mining claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

